

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LOU ANN LOWENSTEIN,

Plaintiff(s),

v.

SEARS ROEBUCK AND CO.,

Defendant(s).

No. C 08-3237 PJH


**ORDER VACATING HEARING AND
TAKING MOTION UNDER SUBMISSION**

Pursuant to the court's pretrial order of November 10, 2008, defendant filed its motion for summary judgment on November 10, 2009, noticed for hearing on December 16, 2009, a date 120 days before the scheduled trial date. Pursuant to Civil Local Rule 7-3, the opposition was due by November 25, 2009 and the reply was due by December 2, 2009. No opposition or reply has been filed, nor has there been a notice of continuance **before** the due date for the opposition as permitted by L.R. 7-7(a)(2). Indeed, no untimely request for a continuance has been filed. Given that the parties were advised in the pretrial order that the court hears all dispositive motions 120 days before trial, a stipulation to continue the motion until after the holidays would have been in violation of the court's order in any event.

Accordingly, the December 16, 2009 date for hearing is VACATED. Although defendant did not file a reply brief, it has not withdrawn the motion either. Accordingly, the court takes the motion under submission, and a written ruling will be issued in due course.

IT IS SO ORDERED.

Dated: December 8, 2009


PHYLLIS J. HAMILTON
United States District Judge